Supreme Court, U.S.
FILED
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No. _____

In The

Supreme Court of the United States

October Term, 1997

TAIWAN SHIN YEH ENTERPRISE CO., LTD.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THE FIRST APPELLATE DISTRICT,

Respondents,

PACIFIC EMPLOYERS INSURANCE CO.,

Real Party in Interest.

On Petition For Writ Of Certiorari To The Superior Court Of The State Of California In And For The City And County Of San Francisco, The Court Of Appeal Of The State Of California First Appellate District

PETITION FOR WRIT OF CERTIORARI

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47 pp

QUESTIONS PRESENTED

1. While the Attorney General, the State Department and the FBI of the United States of America prohibited Taiwan courts and litigants from conducting discovery (including telephone inquiries) and personal service in the territory of the United States, should American litigants and American courts be allowed to conduct service and discovery upon the nationals and entities in Taiwan, where this Court should have, but have not, unified the conflicting decisions on the status of Taiwan, the meaning of the Taiwan Relations Act, and the international comity and reciprocity, as the "subject is open to decision in a case where it matters to the outcome." *Atlantic Mut. Ins. v. Northwest Airlines*, 24 F.3d 958-962 (7th Cir. 1994).

2. Whether the Act of State Doctrine, the theory of foreign sovereignty, the Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States of American ("FCN Treaty"), the written agreement of exclusive jurisdiction and venue in Taipei entered into by and between the insured, Test-Right, of the Pacific Employers Insurance Co., Real Party in Interest, and Super Young Industries Co., Ltd., and the international comity and reciprocity prevent the American courts from exercising jurisdiction and venue over Petitioner under the alleged "alter ego" doctrine, which is not a law in Taiwan and in the Mainland China (collectively "China")?

3. Whether the Supreme Court of California violated due process and equal protection by returning the petition for review to petitioner in Taiwan, which was filed within the ten days period, by surface mail and by refusing petitioner's new counsel to adopt or to refile the same petition?

LIST OF ALL PARTIES

Petitioner Taiwan Shin Yeh Enterprises Co., Ltd. ("TSY"), a defendant, Petitioner, does not have subsidiary or parent corporation.

Petitioner is informed and believes that Pacific Employers Insurance Company ("Pacific"), Real Party In Interest, and Plaintiff, is related in some fashion to the CIGNA Group of Insurance Companies.

The Superior Court of California for the City and County of San Francisco ("SC") and the Court of Appeal of California, First Appellate District ("COA") are Respondents.

Super Young Industrial Co., Ltd. ("SY") is a co-defendant and is independent from TSY.

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OPINION BELOW

There have been no official reports of any opinions below.

The opinions of the Supreme Court of California ("SCC"), dated July 8, May 15, and April 27, 1998, are attached hereto and incorporated herein by this reference as App. 10, 4-5 and 2-3.

The opinions of the Court of Appeal of California ("COA"), dated May 21, and April 16, 1998, are attached hereto and incorporated herein by this reference as App. 6-7, and 1.

The opinion of the Superior Court of California for the City and County of San Francisco ("SC"), dated November 13, 1997, is attached hereto and incorporated herein by this reference as App. 8-9.

JURISDICTION

The decision of the Supreme Court of California was filed on July 8, 1998. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1257, and under the Rules of the Supreme Court of the United States ("USSC"), Rules 10(b) & (c), and 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article VI, Section II of the United States Constitution, Fifth and Fourteenth Amendments. App. 11.

2. The Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States of America. App. 11-12.

3. The Law Governing Extension of Assistance to Foreign Courts. App. 13-14.

4. The Taiwan Relations Act, 22 U.S.C. §§ 3301 et seq.

5. The Hague Service Convention of 1965, 20 U.S.T. 361.

STATEMENT OF CASE

Test-Right Products Co., Inc. ("Test-Rite"), a Taiwan, Republic of China corporation, is an insured of the Real Party in Interest PACIFIC EMPLOYERS INSURANCE CO. ("Pacific" or "Plaintiff"). Test-Right entered into a written contract with Super Young and agreed that the exclusive jurisdiction and venue is the Taipei District Court for any and all disputes between them. App. 14.

Pacific filed a lawsuit in the Superior Court of California against Super Young, also a Taiwan, Republic of China corporation. Pacific later amended its complaint by adding Petitioner TSY as a co-defendant by asserting TSY is an "alter ego" of the co-defendant Super Young. Pacific admitted that Petitioner TSY has absolutely no contact

with the State of California and the product in question is not TSY's.

The Superior Court denied TSY's motions to quash service of summons and complaint, to strike default, and to dismiss or stay action, *inter alia*. App. 8-9. A writ was filed timely with the Court of Appeal for the First Appellate District ("COA"), and was denied on April 16, 1998. App. 1. Because counsel for TSY withdrew from representation, TSY was forced to file the petition for review with the SCC in order to meet the ten days deadline, while looking for a new counsel. In such urgent circumstances, all courts, except the courts in California, would give additional time to a foreign corporation to look for a counsel to adopt and/or to refile the petition as timely. However, SCC refused to file the timely filed petition for review by returning the same to petitioner in Taiwan by surface mail, which took approximately 60 days to reach petitioner. App. 3. SCC further refused to allow petitioner's new counsel to adopt or to refile the same. SCC orally informed petitioner's counsel that the only remedy is to file a motion for relief from the falsely described by SCC as "untimely filing." App. 3. The motion was denied. App. 5.

After TSY filed the writ with COA, Pacific filed demurrer and answer to the writ (collectively "Answer") admitted, and failed to oppose, the following issues and facts. The following issues and facts should have been deemed admitted and are therefore properly certified for the review of the SCC. But, the COA sanctioned petitioner for $4,500.00. App. 7.

1). The Act of State Doctrine, the theory of foreign sovereignty, the Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States of American ("FCN Treaty"), and the international comity prevent the American courts from exercising jurisdiction over Petitioner TSY. TSY has no subsidiary, no parent and no office in the USA. TSY is not a parent or subsidiary of Super Young. The "alter ego" doctrine is not a law in Taiwan and in the Mainland China (collectively "China"). The governments in China have no obligation to comply with the American laws by enacting alter ego doctrine. Naturally, TSY was incorporated under the law in China and has no obligation to comply with the laws in the U.S. The American courts are prohibited from questioning the validity of the laws and acts in China, TSY cannot be brought to the American court solely on the theory of "alter ego." This action must be dismissed with prejudice.

2). While Test-Right and Super Young has an exclusive jurisdiction and venue contract, and as set forth in Petition for writ of mandamus, at 8-10, California court is an extremely inconvenient forum for TSY. Simply and solely because of the frivolous and false allegation of alter ego by plaintiff's counsel to satisfy their vexatious litigation tactics and personal retaliation, TSY became the victim of their longstanding and harassing litigation. This Action is absolutely not foreseeable by TSY. This action must be dismissed on the grounds of such jurisdiction and venue agreement, doctrines of forum non conveniens and due process.

3). The Seventh Circuit held that: "Out of an excess of caution we add: Readers of this opinion should not

seek to divine our views about the status of Taiwan and the meaning of the Taiwan Relations Act, for we have none. The subject is open to decision in a case where it matters to the outcome." *Atlantic Mut. Ins. v. Northwest Airlines*, Cite as 24 F.3d 958-962 (7th Cir. 1994). Since that decision, none of the Supreme Court of the United States, the United States Court of Appeal and the highest court of any state has ever ruled on these issues. *Taylor Made Golf Co. v. Carsten Sports, Ltd.*, ___F.R.D.___, 1997 WL 677391 (S.D. CAL. 1997); *Cosmetech Intern. v. Der Kwei Enterprise & Co.*, 943 F. Supp. 314, 316 (S.D.N.Y. 1996); *In re Schwinn Bicycle Co.*, 190 B.R. 599, 606 (Bankr. N.D. Ill. 1995) and *Atlantic*, 796 F. Supp. 1188, 1191 (E.D. Wis. 1992), are United States District Court ("USDC") or United States Bankruptcy Court ("USBC") cases and are conflicting. The Ninth Circuit did not say anything on these issues either. *See Taiwan v. U.S. District Court*, 128 F.3d 712, 714 (9th Cir. 1997). Thus, the meaning of the TRA, the status of Taiwan and the methods of service and discovery upon corporations and individuals in Taiwan are not solved as of today. It is the time for this Court to resolve all of these issues at once.

4). As admitted by plaintiff and by the superior court in its order and letter rogatory, the *only* authorized method of service upon TSY is "certified mail". *See* Answer, Exhibit 10. This Court is requested to call any U.S. Postal Service and to take judicial notice that certified mail cannot be mailed outside the United States. Therefore, plaintiff's attempted service by certified mail is legally and factually impossible. The default must be set aside and the alleged service of summons must be quashed.

5). Plaintiff also alleged another unauthorized service by the lower court. The undisputed facts are: (1) the alleged service was made upon an assistant in handling the health insurance, who used a "non-official" company's stamp to "check in" the summons without the Seal of an authorized officer, who did not know the contents of the paper and who is not authorized to accept service of summons and complaint, (2) Mr. Mayfield of AIT did not have personal knowledge of the vast majority of the events described in his declarations, including the date[1] where the AIT allegedly transmitted the defective papers to TECRO, and (3) the alleged service by the Cha-Yi District Court was not made by the certified mail as authorized by the lower court or by the personal service as requested by the international method of service.[2]

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[1] *See* Answer, at 23, ¶ 8

[2] Moreover, Pacific also admitted the following clear defects of the alleged service:

a. Pursuant to Assistance Article 1, only a Taiwan "Court" is authorized to "render assistance" to "foreign courts". Here, Mark Mayfield specifically stated that local "assistance" was provided by TECO. Since TECO is not a Taiwan "Court", this assistance was un-authorized and thus the purported service was improper.

b. Pursuant to Article 2, any "assistance" shall not violate the statutes and ordinances of the [ROC]. Under ROC law service on a business is proper only if the authorized legal representative of that business is named and personally served. Here, the service was purportedly made on an "employee" of TSY, who is not authorized to accept the service. Moreover, Article 5 requires that the name, nationality, and domicile of the

6). Under the doctrines of the international sovereign equality, and international mutual judicial respects,

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person to be served (here, the legal representative of Petitioner) must be set forth by Pacific for the foreign court. Here, this was not done.

It appears that the service was done by mail, not by personal service of the diplomate or by the court. If the service can be done by mail, there is no need for the Convention and for the diplomatic channel.

c. Pursuant to Article 3, the "substance of each case . . . shall be stated in writing and transmitted through diplomatic channels". Mayfield declares, in ¶ 2, that he admits that there are no "diplomatic relations" between the U.S. and Taiwan of ROC, therefore the subject transmission violates Article 3.

Additionally, the United States has deprived all the courts in the U.S. of both subject matter and personal jurisdiction over all residents of Taiwan by blocking the diplomatic channel. The U.S. cannot terminate all diplomatic relations with Taiwan, yet maintain jurisdiction over her citizens. Thus, all courts in the U.S. and U.S.A. are estopped from exercising jurisdiction over TSY. By terminating diplomatic channels, the U.S. prevents service from being effected upon persons in Taiwan. Put in another way, the U.S. government has terminated all U.S. courts' jurisdiction over all residents of Taiwan.

d. Article 8 requires that the "Fees in a civil case shall be those of the [ROC]". Here, no fees were paid by Plaintiff. Therefore, the instant service violates Article 8.

e. Article 4 requires the U.S. government to make a treaty, convention or contract with the ROC or Taiwan government to provide a reciprocal assistance, or at least by the President or Secretary of State of the U.S. This has not been done. This agreement or reciprocity is a nation to nation, not court to court. As a practical matter, a judge of the Superior Court signs the reciprocity agreement and it has no binding upon another judge of this Superior Court, upon any judges of any court in the

this Action must be dismissed because plaintiff and its two counsels (Chiles and Strayer[3]) have consistently refused to attend the criminal and civil hearings on the criminal indictment and civil actions against them in completely disregarding the foreign sovereignty and judicial respects, while TSY has come to the American courts to litigate.

The issuance of preliminary injunctions by the Taiwan Court of Appeal against Respondent and Pacific proves that Petitioner has reasonable probability to prevail. *See Wilson v. Watt*, 703 F.2d 395 (9th Cir. 1993); *Original Appalachian Art Works v. Topps Chewing Gum*, (N.D. Ga. 1986).

7). Under international comity and forum non conveniens, this action must be stayed, as an alternative, because the criminal indictment and civil actions against plaintiff and its two counsel (Chiles and Strayer) are pending before the Taipei Courts and will be concluded

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United States. Moreover, no judge in Taiwan is authorized to make any reciprocity agreement with anyone in the world. Therefore, the reciprocity signed by any judge in the U.S. cannot be corresponding with any judge in Taiwan, who has no authority. In short, it is nation to nation practice, not one American judge to one Taiwan judge. Plaintiff has failed to comply with this nation to nation requirement.

[3] Plaintiff's counsel intentionally and wilfully attacked TSY's counsel by filing a perjured declaration stating that the criminal charges were filed against Mr. Mayfield and others. The true and correct copy of the criminal charges supplied by plaintiff would speak for itself. *See* petition, Exhibit C.

earlier than this Action[4], and because the State Department has informed that the final judgments of the courts in Taiwan will be recognized by the U.S. courts,[5] just as Taiwan courts recognized the American judgments.

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[4] When a court finds, on the motion of a party or on its own motion, that in the interest of substantial justice an action should be heard in a forum outside California, it shall stay or dismiss the action in whole or in part on any conditions that may be just. Code Civ. Proc. § 410.30(a).

The pending criminal indictment and civil actions would directly affect the merits of the case. These trials will be earlier than the trial of Superior Court; in considering the public interest factors, the same result is reached. *Id. Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 837 (5th Cir. 1993). Under the doctrine of forum non conveniens, the court's discretion is limited to dismissing the action. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Thus, this action should be dismissed, or at the very least, stayed as to TSY trial. The res judicata and collateral estoppel doctrines would prevent California courts from continuing this Action. The Superior Court must stay this Action.

[5] Chapter XIV, Section 14, of the *Digest of International Law* by Marjorie M. Whiteman (U.S. Government Printing Office, (1968)), volume 6, pages 225-253. An authoritative discussion of recognition of foreign-country judgments in the United States is contained in Section 98 of the Rest. 2d, *Restatement of Conflict of Laws*, (St. Paul, Minnesota, American Law Institute publication, 1971), volume 1, pages 298-302 and in Sections 481-486 of the Rest. 3rd, *Restatement of the Foreign Relations Law of the United States* (St. Paul, Minnesota, American Law Institute publication, 1987) Vol. 1, pp. 591-629. Restatement 3d, *Restatement of the Foreign Relations Law of the United States* §§ 481-486 (1986); Gary B. Born & David Westin, *International Civil Litigation in United States Court, Commentary and Materials*, Chapter 9 (2d Ed., Kluwer Law and Taxation Publishers, Deventer, The Netherlands, 1992); David Epstein & Jeffrey L. Snyder, *International Litigation: A Guide to Jurisdiction, Practice and*

8). The United States Department of State, FBI and Attorney General prohibits the courts in Taiwan from conducting any discovery (including telephone inquiries) and from personal service of American litigants within the territory of the United States. Exhibit F attached to TSY's reply paper filed with COA. Jiang Decl. ¶ 4. Pursuant to the admission of plaintiff and the Guidelines of the State Department,[6] the international comity and reciprocity, as well as international equal sovereignty and dignity, the American courts are also prohibited from doing the same within the territory of Taiwan,[7] or of the Republic of China ("ROC"), or of the People's Republic of China ("PRC"), depending on the true status of Taiwan to be determined by this Court. In light of such international, political and judicial difficulties, this Action must

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Strategy, Chapter 11 (2d Ed., Prentice Hall Law & Business, 1994).

[6] Answer, at 19.

[7] Plaintiff, in Answer at 19, admitted that: "the Taiwan court will *not* permit examination of witnesses by attorneys, witnesses would be examined by the court on the basis of written interrogatories. A full transcription of the deposition, in Chinese, is available and should be specifically requested in the letter rogatory." With such clear knowledge through the admission, plaintiff and its counsel must be sanctioned for deceit and collusion practice with the Commissioner of the Superior Court. Plaintiff misled that Commissioner that Ms. Ruey refused to testify in the deposition in Taiwan on certain issues. Consequently, severe sanctions were imposed against Super Young, including the entry of default. Answer, at 11, Quinn Decl. Exhibits 4 & 5. Such deceit and collusion justify the criminal charges and civil action against Plaintiff and its counsel before Taipei Court.

be dismissed or stayed and this Court must allow plaintiff and its two counsels to file a counterclaim before the Taipei Courts in the pending actions against them.

9). Pacific admitted that the alleged product in question is not TSY's. Nor is there any contact by TSY sufficient to establish the jurisdiction of California court over TSY in connection with this action.[8]

10). The court cannot exercise jurisdiction until defendant has been served properly. On the other hand, the fact that proper service was made (i.e, adequate "notice" given) does not mean the court can exercise personal jurisdiction over the defendant.

This Court is requested to appoint a neutral and detached Chinese interpreter from Taiwan who is educated in both Chinese and American laws and who is familiar with the languages in Taiwan and in the U.S. to

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[8] Due process requires that exercise of jurisdiction be not unreasonable, taking into consideration the following:

- burden on defendants in defending locally;
- foreseeability of litigation locally;
- plaintiff's interest in obtaining complete and effective relief;
- local interest in having the matter heard locally; and
- public interest in efficient resolution of the matter. *See Cannon v. Gardner-Martin Asphalt Corp. Retirement Trust*, 699 F. Supp. 265, 267 (M.D. FL. 1988).

None of the above requirements favors California court's exercise of jurisdiction over TSY, where the product in question is not TSY's.

testify the accuracy of the translation. In fact, plaintiff's alleged translation is beyond understanding of anyone in Taiwan and the alleged declaration is unreliable. Due process requirement of adequate notice fails.

In Plaintiff's Answer, Plaintiff's counsel wilfully omitted the facts that the lower court refused to enter default judgment ("DF") against Super Young ("SY") because Plaintiff's counsel's amended complaint was so defective and unprofessional that a DF cannot possibly be entered under the current law. Plaintiff's counsel filed an amendment to amended complaint and also frivolously named TSY as a defendant on the sole basis of "alter ego."

At the time when Plaintiff's counsel filed such amendment, they knew with certainty that TSY has absolutely no contact and no relationship with California and with plaintiff. Plaintiff's counsel's such amendment reopened the default erroneously entered by the commissioner. Everything came back to the beginning and the service of such amendment upon Super Young and TSY must be done again.

Plaintiff's counsel wilfully deceived the COA and wilfully concealed the fact that the default erroneously entered against Super Young through Plaintiff's counsel's misleading, deceit and false declaration was vacated by the lower court on its own motion on July 3, 1998 while Mr. Chiles agreed to such vacation in the hearing (Mr. Chiles is also a leading counsel in the Superior Court and in the COA). *See* Exhibit G and cover page of plaintiff's Answer. Quinn Decl., ¶ 17 is false. Since Super Young filed the motion to quash, et al., and filed the writ, as

admitted by Plaintiff's counsel, no default can be entered. *See* Exhibit G and Plaintiff's Answer, at 11-12.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS IMPORTANT QUESTIONS WHICH SHOULD HAVE BEEN, BUT NOT YET, DETERMINED BY THIS COURT AND BY OTHER COURTS IN THE UNITED STATES

A. THE AMBIGUITY AND UNCERTAINTY ON THE STATUS OF TAIWAN, THE MEANING OF TAIWAN RELATIONS ACT, AND INTERNATIONAL COMITY AND RECIPROCITY MAKING REAL PARTY'S AND RESPONDENTS' SERVICE OF PROCESS IS INSUFFICIENT AND IN VIOLATION OF THE SOVEREIGNTY OF A FOREIGN NATION

1. The only authorized method of service upon TSY by the Superior Court was "certified mail." Plaintiff's Answer, Exhibit 10. TSY requests this Court to contact any U.S. Postal Office (Service) and to take judicial notice that "certified mail" cannot possibly be sent outside the United States. Therefore, plaintiff's alleged service by "certified mail" upon TSY on October 25, 1996 is impossible. *See* Answer, at 21. The summons must be quashed.

The Guidelines of the State Department is wrong in many aspects, including the service by certified mail, registered mail and personal service by someone other than an employee of the Taiwan courts. In fact, the United States Department of State has printed a "disclaimer" that the information provided "may *not* be totally accurate . . . Questions involved interpretation of specific foreign

law should be addressed to foreign counsel." *See* Exhibit C, provided by Plaintiff in the opposition.

In Taiwan, any and all service of any papers must be done by the courts in Taiwan exclusively. No one else is authorized to make any service. *See* Article 123 of the Civil Procedure of ROC. Exhibit H. Thus, the courts in Taiwan do not recognize the service made by an attorney or by a party's agent. Plaintiff's attempted service fails to comply with the laws in Taiwan.

2. The Seventh Circuit held that: "Out of an excess of caution we add: Readers of this opinion should not seek to divine our views about the status of Taiwan[9] and the meaning of the Taiwan Relations Act, for we have none. The subject is open to decision in a case where it matters to the outcome." *Atlantic Mut. Ins. v. Northwest Airlines*, Cite as 24 F.3d 958-962 (7th Cir. 1994). Since that decision,

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[9] No matter what the status of Taiwan might be, a part of the People's Republic of China ("PRC"), a part of the Republic of China ("ROC") or an independent country from PRC and ROC, the following results are always the same: all service and discovery must be translated into Mandarin Chinese and made through the diplomatic channel. The only difference is which diplomatic channel should be gone through, PRC, ROC, or Taiwan.

"[A]t a minimum a defendant should be informed *in the language of the jurisdiction in which he is served* . . . that a legal action of a specific nature is pending against him at a particular time and place." *Julen v. Larson*, 25 Cal. App. 3d 325, 328; 101 Cal. Rptr. 796, 798 (1972). This translation requirement is applicable to Petitioner residing in Taiwan, regardless of the status of Taiwan.

no U.S. Supreme Court, no federal circuit court[10] and the highest court of any state has ever ruled on these issues.

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[10] **2. Seventh Circuit Case – If Taiwan Is Part of PRC**

In *Atlantic Mut. Ins. Co. v. Northwest Airlines*, 796 F. Supp. 1188, 1191 (E.D. Wis. 1992), the court held that Taiwan was bound by the Warsaw Convention even though it did not sign that document because Taiwan is part of the People's Republic of China ("PRC") and PRC was a member of that convention. For the same reason, the Real Party shall serve Petitioner pursuant to the Hague Convention ("HC").

The Seventh Circuit held that "the status of Taiwan and the meaning of the Taiwan Relations Act. . . . is open to decision in a case where it matters to the outcome." *Atlantic Mut. Ins. v. Northwest Airlines*, 24 F.3d 958, 962 (1994).

"By virtue of the Supremacy Clause, U.S. Const., Art. VI, the Convention preempts inconsistent methods of service prescribed by state law in all cases to which it applies." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 108 S. Ct. 2104 (1988). "The Hague Convention provisions are mandatory, so that failure to comply voids the attempted service." *Id.*, 486 U.S. at 698, 108 S. Ct. 2108.

Failure to comply with the Hague Convention ("HC") procedures void the service, even though it was made in compliance with the state law, and even though the Appellants have actual notice of the lawsuit. *Dr. Ing. H.C.F. Porsche, A.G. v. Sup. Ct.*, 123 Cal. App. 3d 755, 177 Cal. Rptr. 155 (1981).

As summarized by the Supreme Court, the Hague Service Convention has been interpreted to

> require [ ] each [nation] to establish a central authority to receive requests for service of documents from other countries. U.S.T. § 362, T.I.A.S. 6638, Art. 2. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. Art. 5. The

Taylor Made Golf Co. v. Carsten Sports, Ltd., ___F.R.D.___, 1997 WL 677391 (S.D. Cal. 1997); *Cosmetech Intern. v. Der*

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central authority must then provide a certificate of service that conforms to a specified model. Art. 6.

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. at 698-699.

Real Party's circumvention of the procedures for service of process mandated by the Hague Convention constitutes "contumacious conduct by the[m]" and therefore this Action should be dismissed with prejudice for defective service of process. *Gaspard v. United States*, 713 F.2d 1097, 1105-1106, fn. 20 (5th Cir. 1983).

3. Second And Ninth Circuits – If Taiwan is Part of ROC

In *New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc.*, 954 F.2d 847, 852 (2d Cir. 1992), the court recognized the Republic of China and the Treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States of America ("FCN Treaty") is still "a valid and enforceable treaty" binding upon the United States of America ("USA").

The FCN Treaty, as a Supremacy Law of Land, mandates the USA to let the nationals of the ROC *not* to "receive treatment with respect to such rights and privileges less favorable than the treatment which is or may hereafter be accorded to the nationals of any third party." Article II, Section 3. App. 11.

Petitioner must be treated no less favorable than any third party, which is a member of the HC. Thus, FCN Treaty mandates the result of application of the HC. The FCN Treaty requires ROC and the United States to guarantee privileges of their own laws to citizens of the other nation and was held to be enforceable despite the United States' recognition of PRC. *New York Chinese TV Programs, supra*, 954 F.2d at 852.

In *Chu v. Republic of China, et al.* 93-15537 (July 29, 1994, 9th Cir.), the Ninth Circuit held that the Republic of China ("ROC") is an independent country and enjoys the protection of the Foreign Sovereign Immunity Act, and that the ROC and its branches, Executive Yuan, and Taiwan Provincial Government,

Kwei Enterprise & Co., 943 F. Supp. 314, 316 (S.D.N.Y. 1996); *In re Schwinn Bicycle Co.*, 190 B.R. 599, 606 (Bankr. N.D. Ill. 1995) and *Atlantic*, 796 F. Supp. 1188, 1191 (E.D. Wis. 1992), are United States District Court ("USDC") or United States Bankruptcy Court ("USBC") cases and are conflicting. The Ninth Circuit did not say anything on these issues either. *See Taiwan v. U.S. District Court*, 128 F.3d 712, 714 (9th Cir. 1997). Thus, the meaning of the TRA, the status of Taiwan[11] and the methods of service

---

and its government owned company, Taiwan Tobacco & Wine Monopoly Bureau ("TTWMB") are immune from lawsuits in the United States. This case was not reported, but can be found in the Ninth Circuit.

Recognition of the ROC in 1994 has the same meaning and effect as the recognition of the FCN Treaty by the Second Circuit in *New York TV* case. HC is thus applicable.

Respondent and Pacific did not comply with HC or letter rogatory.

USA is estopped from claiming that ROC or Taiwan is *not* signatory of the HC. Both Taiwan and ROC were willing and ready to join the HC. But, the USA prohibited them from joining. In part, the USA refused to recognize either ROC or Taiwan. Now, USA cannot profit from its unclean hand and waiver. HC is applicable to service in the ROC or Taiwan.

[11] **4. If Taiwan Is Not Part of PRC or ROC, But An Independent Country**

The United States State Department announced the "Guidelines," which requires that all services must comply with the "Law Governing Extension of Assistance to the Foreign Court of the Republic of China" ("Assistance"), which is in the essence the same as those in the HC. There is a Central Authority ("CA") in Taiwan, as well, to accept and effect the service of summons and complaint and the service of discovery.

and discovery are not solved as of today. It is the time for this Court to resolve all of these issues at once.[12]

The Assistance mandates that Appellees serve Appellants through diplomatic channels. *See* Art. 3 of Assistance. Respondent and Pacific did not go through any diplomatic channels in Taiwan, did not translate into Chinese, and the attempted service is not effective on Petitioner.

[12] **5. Federal Rules of Civil Procedure**

FRCP Rule 4(f) and (h) provides as follows:

> **(f) Service Upon Individuals in a Foreign Country.** Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:
>
> (1) by any *internationally agreed means* reasonably calculated to give notice, such as those means authorized by the *Hague Convention* on the Service Abroad of Judicial and Extrajudicial Documents; or
>
> (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
>
> (A) *in the manner prescribed by the law of the foreign country* for service in that country in an action in any of its courts of general jurisdiction; or
>
> (B) as directed by the foreign authority in response to a *letter rogatory or letter of request.*
>
> * * *

3. In addition to the clear and undisputed defects in AIT's declarations, there are so many unreliable multiple hearsay, not just double hearsay. Plaintiff has failed to produce any witness to testify before the Superior Court. The summons must be quashed because Plaintiff has failed to meet its burden of proof. Among other things, did Mr. Mayfield have the following personal knowledge of the events describing by him in the declaration under penalty of perjury: (1) any treaty, convention or contract between two countries for reciprocal assistance, or the President or Secretary of State of the USA signed any treaty, convention, contract or declaration for the reciprocal assistance,[13] (2) any authority conferred upon the judge of the Superior Court to represent the USA as a whole for *all* cases, not just in his personal capacity as a judge of lower court for one case only, to issue letter rogatory, (3) the letter rogatory comply with all requirements of the Assistance, (4) the letter rogatory was legally and constitutionally transmitted to the Secretary of State of the USA by the Superior Court, (5) the Secretary of State of the USA then legally and constitutionally transmitted to the Embassy of the *Republic of China*, not

---

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a . . . foreign corporation . . . shall be effected:

* * *

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f). . . .

Respondent and Real Party have complied with nothing.

[13] Article 4 of the "Law Governing Extension of Assistance to the Foreign Court" (the "Assistance"). *See* App. 13.

Taiwan,[14] (6) the Embassy of the *Republic of China*, not Taiwan, then legally and constitutionally transmitted to the Ministry of Foreign Affairs of the *Republic of China*, not Taiwan,[15] (7) the Ministry of Foreign Affairs of the *Republic of China*, not Taiwan, then legally and constitutionally transmitted to the Judicial Yuan of the Republic of China, not Taiwan,[16] (8) Judicial Yuan of the Republic of China, not Taiwan, then legally and constitutionally transmitted to the Supreme Court of the Republic of China, not Taiwan, (9) the Supreme Court of the Republic of China, not Taiwan, then legally and constitutionally transmitted to the Court of Appeal of the *Republic of China*, not Taiwan, (10) which in turns legally and constitutionally transmitted to the District Court of the Republic of China, not Taiwan, in Chia-Yi, (11) which in turns serves upon TSY *personally* in accordance with the Code of Civil Procedure of the ROC, (12) the District Court of the ROC then transmitted back through the reserved orders (i.e., from (11) to (4)) of the above to the Superior Court.

Assuming AIT is a legal and constitutional substitute of the Secretary of State and assuming further that TECRO is a legal and constitutional substitute of the Embassy of the ROC, Mr. Mayfield of AIT still has *no* personal knowledge of (1) through (3), (6) through (12)

---

[14] Because there is no such name as Embassy "of Taiwan."

[15] Because there is no such name as Ministry of Foreign Affairs "of Taiwan."

[16] For this and for the following courts, they are known as ___ Court of the "Republic of China", not known as ___ Court of "Taiwan."

and in the reversed order. Plaintiff failed to call for the testimonies of all persons involved in (1) through (12) above to testify. It did not meet its burden of proof. In the paragraph 8 of Mayfield's declaration, the date of transmission from AIT to TECRO is missing. *See* Answer, at 23. This proves that Mr. Mayfield did not know who and on what date transmits the documents to TECRO. He has no record to prove the date, and the person. Such are under the sole control of AIT. Even Mr. Mayfield cannot testify for the accuracy of the date, he is not competent to testify for anything else which is beyond his control.

In short, it is extremely dangerous to admit the multiple hearsay declaration filed by AIT and Mr. Mayfield was not called to testify and subject to cross-examination. The lower court made all decisions on the air, simply based on plaintiff's personal attacks to distract his attention. That is very unfair to foreign litigants who are forced to come to California to litigate such frivolous, outrageous and vexatious lawsuits. The abuse of discretion by the Superior Court is clear and convincing.

With respect to the order to show cause issued by the COA against petitioner, the sanction of $4,500.00 against Petitioner under California Code of Civil Procedure §§ 907 and 1109 is unconstitutional and inappropriate where no service of order to show cause was ever made upon petitioner in Taiwan and the petitioner appeared in this action specially without authorizing anyone, including its specially appearing counsel, to accept the alleged service.

B. THE ACTIONS OF THE ATTORNEY GENERAL, THE FBI, AND THE STATE DEPARTMENT, THE EXCLUSIVE JURISDICTION AND VENUE AGREEMENT BETWEEN REAL PARTY'S INSURED AND SUPER YOUNG, AS WELL AS THE ACT OF STATE DOCTRINE, THE FOREIGN SOVEREIGNTY AND THE FCN TREATY DEPRIVE THE CALIFORNIA COURTS WITH JURISDICTION

The exclusive agreement on jurisdiction and venue by Test-Right and Super Young deprived California courts of any jurisdiction. App. 14. The Attorney General, the FBI and the Statement Department prohibit the courts and the diplomats of Taiwan from conducting any service and discovery. On the other hand, the courts in the United States ordered the service and discovery upon and against nationals in Taiwan. Such discriminatory orders and attitudes of the American judicial and executive branches violate the due process and equal protection of the U.S. Constitution and violate the FCN Treaty. Under the sovereign equality and international comity, the American litigants should not be allowed to sue Taiwan residents in the American courts, and the American courts should be disallowed to order any service and discovery upon and against residents of Taiwan.

There is no "alter ego" laws in both Chinas. The laws in Taiwan prohibit anyone to hold another company responsible under the theory of alter ego. Such legislative acts were done within the territory of Taiwan. The orders of the California courts to bring the Petitioner to the California courts violate the acts of state doctrine, foreign sovereignty, and FCN Treaty.

TSY has always denied that it is an alter ego of Super Young. There is absolutely no evidence whatsoever to support such allegations. The lower court did not find the "alter ego" either because, in part, the issue of fact shall be determined by jury, not by a judge. Moreover, neither TSY nor Super Young is a subsidiary or parent company of the other. All cases cited by plaintiff have no application here. Jiang Decl./Verification.

For instance, in *Regie v. Superior Court*, 208 Cal. App. 2d 702, 25 Cal. Rptr. 530 (1962), Renault was formed in New York and Regie was its subsidiary. Both companies were formed in the U.S. and automatically accept all American laws, including alter ego. However, neither Super Young nor TSY was formed in the USA, nor do they have any subsidiary or office in the USA, nor are they qualified to do business in the USA. The actions of the attorney general, the FBI, and the State Department, the exclusive jurisdiction and venue agreement between Real Party's insured and Super Young, as well as the act of state doctrine, the foreign sovereignty and the FCN Treaty deprive the California Courts with jurisdiction as well. The American court clearly has no personal and subject matter jurisdictions over TSY.

C. THE SUPREME COURT OF CALIFORNIA VIOLATED DUE PROCESS AND EQUAL PROTECTION BY RETURNING THE PETITION FOR REVIEW TO PETITIONER IN TAIWAN, WHICH WAS FILED WITHIN THE TEN DAY PERIOD, BY SURFACE MAIL AND BY REFUSING PETITIONER'S NEW COUNSEL TO ADOPT OR TO REFILE THE SAME PETITION

All courts in the United States, except the State of California, have always allowed papers to be filed by the parties pending upon retaining the local counsel by the parties. In this case, Petitioner's counsel Mr. Sullivan was coerced to resign by Pacific's counsel and by the COA suddenly with continuous threats of sanctions. Petitioner suddenly had no counsel and filed papers on its own within 10 day period. The SCC should have notified petitioner or its former counsel by phone or by fax that it would return the petition. Rather, it wilfully and intentionally returned the petition by surface mail in complete disregard to petitioner's rights. The surface mail reached petitioner 60 days thereafter.

Moreover, the requirement that all companies, including foreign companies, be represented by counsel is unconstitutional and is in violation of the FCN Treaty. In Taiwan courts, America litigants, including American companies, are allowed to represent themselves without a counsel. Even the requirement that companies must be represented by counsel is legitimate and constitutional for American companies, the same should not be applicable to the foreign companies whose cases involve substantial international law and Taiwan laws, as in this case.

The Supreme Court of California violated due process and equal protection and violated the FCN Treaty by returning the petition for review to petitioner in Taiwan, and by refusing petitioner's new counsel to adopt or to refile the same petition.

CONCLUSION

The laws and cases in the above areas are unclear and conflicting. This Court must unify these cases so that the judgment of the California courts can be enforced in Taiwan. Otherwise, American courts are wasting their time and energies in producing papers which are considered as useless and unenforceable in Taiwan. That is why the American courts should not be ignorant of the reality.

For reasons set forth above, this Court should grant the petition and provide the relief set forth in the prayer.

Dated: September 30, 1998

Respectfully submitted,

LAW OFFICES OF LANCE HADDIX
Specially Appearing
Petitioner Taiwan Shin Yeh
Enterprise Co., Ltd.

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

TAIWAN SHIN YEH ENTERPRISE, CO., LTD., Petitioner, v. THE SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO, Respondent, PACIFIC EMPLOYERS INSURANCE COMPANY Real Parties in Interest.	A081459 (San Francisco County Super. Ct. No. 956222) (Filed Apr. 16, 1998)

BY THE COURT:

The petition for writ of mandate is denied. (Phelan, P.J., Corrigan, J. & Parrilli, J. participating.)

Dated: Apr. 16, 1998 PHELAN, P.J. P.J.

App. 2

Supreme Court of California

[LOGO]

ROBERT F. WANDRUFF
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

April 27, 1998

JOHN C. ROSSI
ASSISTANT CLERK –
ADMINISTRATOR
SAN FRANCISCO

ROBERT D. BARROW
CHIEF DEPUTY
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Sophia Jiang
c/o Taiwan Shin Yeh Enterprises Co., LTD.
P.O. Box 84-453
Taipei, Taiwan R.O.C.

Re: A081459 – Taiwan Shin Yeh Enterprises, Co., LTD v. Superior Court, San Francisco.

Dear Ms. Jiang:

Returned unfiled is your petition for review and filing fee received April 24, 1998 in the above-referenced matter. The Court of Appeal docket reveals that you are not the attorney of record for the petitioner in this case. Since your membership number is not included on the cover of the petition, I must also assume that you are not a member of the State Bar of California. Because only a member of the State Bar can represent a party in a California court, this office is unable to file this petition.

Very truly yours,

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court

/s/ John C. Rossi
By: John C. Rossi
Assistant Clerk –
Administrator

Enclosures

Briefs are returned separately by surface mail.

Supreme Court of California

[LOGO]

ROBERT F. WANDRUFF
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

May 15, 1998

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Lance Haddix
4605 Lankershim Blvd.
Suite 718
No. Hollywood, Ca 91602

Re: S070194/AD31459 Taiwan Shin Yeh Enterprise Company, Ltd. v. S.F.S.C.

Dear Mr. Haddix:

The application for relief from default and petition for review were presented to the court for its consideration.

The court directed that the petition for review be returned for the reason that it would not grant the permission necessary to allow the untimely filing.

[X] Returned is the original and copies of the petition for review.

[ ] Returned is the original of the petition for review. Should you desire return of the additional copies, please notify our Los Angeles office within 10 days.

[ ] Returned is the original of the petition for review. Your copies are being sent under separate cover.

[X] Returned is the $200.00 filing fee.

Very truly yours,

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court

/s/ Tommie O'Bryant Wright
By: Tommie O'Bryant Wright,
Deputy Clerk

Long & Levi
cc: s.f.
l.a.
Court of Appeals, First Appellate District

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

TAIWAN SHIN YEH ENTERPRISE, CO., LTD., Petitioner, v. THE SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO, Respondent, PACIFIC EMPLOYERS INSURANCE COMPANY Real Party in Interest.	A081459 (San Francisco County Super. Ct. No. 956222) (Filed May 21, 1998)

BY THE COURT:

Following notice to both parties, we conducted a hearing on real party's motion to impose sanctions against petitioner company for filing a frivolous petition in violation of Code of Civil Procedure sections 907 and 1109. Petitioner filed opposition to the motion. Having carefully considered the matter, we conclude that this petition is frivolous – that it indisputably had no merit, and that any reasonable attorney would agree that it is totally and completely without merit. (See *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, 1570-1571.)

The appropriate measure of sanctions is the amount of real party's costs and attorney's fees. Counsel for real party has submitted a declaration stating he has spent thirty (30) hours in preparation to answer this petition at a fee of $150/hour, for a total of $4,500. We find this amount to be reasonable. Therefore, we order petition Taiwan Shin Yeh Enterprise Co., Ltd. to pay $4,500 to real party and its attorneys.

Dated: May 21, 1998 PHELAN, P.J. P.J.

ROBERT C. CHILES State Bar #56725
ANN L. STRAYER State Bar #132311
LONG & LEVIT LLP
101 California Street, Suite 2300
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(415) 397-2222 fax: (415) 397-6392

Attorneys for Plaintiff
PACIFIC EMPLOYERS INSURANCE COMPANY

SUPERIOR COURT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

(Filed Jan. 5, 1998)

PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation; TEST-RITE PRODUCTS CO., INC., a corporation; and HOME DEPOT U.S.A., INC., Plaintiffs, vs. SUPER YOUNG INDUSTRIES, INC., a corporation; AGORA SYNDICATE, INC.; ILLINOIS INSURANCE EXCHANGE OF CHICAGO; and DOES 1 THROUGH 10, Defendants.	CASE NO. 956222 ORDER DENYING MOTION TO QUASH SERVICE OF SUMMONS Date: November 13, 1997 Time: 9:00 a.m. Dept.: 10, Room 414 Trial: None Set D.A.F.: 11/9/97

Defendant Taiwan Shin Yeh Enterprises Corporation to quash service of summons and complaint, to strike

default, and dismiss or stay action case on regularly for hearing before this court on Thursday, November 13, 1997 at 9:30 a.m. in Department 10, the Honorable David A. Garcia, judge presiding. Ann L. Strayer appeared on behalf of plaintiff, Pacific Employers Insurance Company. Kevin M. Sullivan appeared on behalf of Taiwan Shin Yeh.

Upon full consideration of the evidence, points and authorities submitted by the parties, the arguments of counsel and good cause appearing therefore,

IT IS HEREBY ORDERED that defendant Taiwan Shin Yeh's motion to quash service of summons and complaint, to strike default, and dismiss or stay action is denied.

Dated: Dec. 31, 1997

/s/ DAVID A. GARCIA
HONORABLE DAVID A. GARCIA
JUDGE OF THE
SUPERIOR COURT

APPROVED AS TO FORM:

/s/ Kevin K. Sullivan 12-3-97
KEVIN K. SULLIVAN
Attorneys for Defendant
TAIWAN SHIN YEH ENTERPRISES CO.

SF/51994, 701/PL039373, 712

First Appellate District, Division Three, No. A081459
S070194

IN THE SUPREME COURT OF CALIFORNIA

TAIWAN SHIN YEH ENTERPRISE COMPANY LIMITED,
Petitioner

v.

SAN FRANCISCO COUNTY SUPERIOR COURT,
Respondent

PACIFIC EMPLOYEES INSURANCE COMPANY Et Al.,
Real Parties In Interest

(Filed Jul. 8, 1998)

Petition for review DENIED.

/s/ George
Chief Justice

D. The United States Constitution, Art. VI, Section II: " . . . all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the constitution or Laws of any State to the Contrary notwithstanding."

Fifth Amendment: " . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment: " . . . No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

E. The treaty of Friendship, Commerce And Navigation Between the Republic of China and the United States of America

ARTICLE II

3. The nationals of either High Contracting Party shall not in any case, in the enjoyment of the rights and privileges . . . receive . . . less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country.

ARTICLE VI

1. Throughout the whole extent of the territories of each High Contracting Party the nationals of the other

High Contracting Party shall receive the most constant protection and security for their persons and property, and shall enjoy in this respect the full protection and security required by international law.

2. The property of nationals, corporation and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation.

4. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of access to the courts of justice and to administrative tribunals and agencies in the territories of the other High Contracting Party, in all degrees of jurisdiction established by law, both in pursuit and in defense of their rights; shall be at liberty to choose and employ lawyers, interpreters and representatives in the prosecution and defense of their rights before such courts, . . . and shall be permitted to exercise all these rights and privileges, in conformity with the applicable laws and regulations, if any, which are or may hereafter be enforced by the duly constituted authorities, on terms no less favorable than the terms which are or may hereafter be accorded to the nationals, . . . of such other High Contracting Party and no less favorable than are or may hereafter be accorded to the nationals, . . . of any third country.

F. Law Governing Extension of Assistance to Foreign Court

Article 2

Such assistance shall not violate the statutes and ordinances of the Republic of China.

Article 3

The substance of each case commissioned by a foreign court shall be stated in writing and transmitted through diplomatic channels.

Article 4

The foreign country where the foreign court requests for an assistance from the court of the Republic of China must state that it would provide a reciprocal assistance if a court of the R.O.C. requests for an assistance under the same or similar circumstances.

Article 5

Each foreign court requests for the assistance from the court of the Republic of China shall set forth in its commission [power of attorney] the name, nationality, and domicile, residence, or office address, business address of the person to be served.

Article 6

Each court shall effect discovery [investigation of evidence] according to the theme of the foreign court's commission and in accordance with the provisions governing the discovery under the Code of Civil Procedure and the Code of Criminal Procedure.

Each foreign court requests for the assistance from the courts in the Republic of China for the discovery shall, in its commission, set forth the names of the parties, the device of discovery [kinds of evidential methods], the names, nationality, domicile, residence, or office address, business address of the responding party or third party, and set forth the matters subject to the discovery [to be investigated].

Article 7

If the commission [power of attorney] requesting for the assistance from the courts of the Republic of China and other relevant documents of a case are in a foreign language, true Chinese translations shall be attached with a certificate that the translation is true and correct.

G. TEST-RITE Products Co., Inc.'s Purchase Agreement Form

STANDARD BUY-SELL AGREEMENT

Applicable Law: the laws of the Republic of China

This agreement shall be governed and interpreted by the laws of the Republic of China

Both parties [Test-Rite and Super Young] agreed and consented that the Taiwan Taipei District Court shall have exclusive and sole jurisdiction and venue to resolve any and all disputes, claims and/or causes of action arising under or relating to this Agreement and the parties.